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Attorneys for Plaintiff, JOHN ESPINOZA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN ESPINOZA, an individual,

Plaintiff,

-vs-

CITY OF IMPERIAL, a public entity;
MIGUEL COLON, an individual; IRA
GROSSMAN, an individual; and DOES 1
THROUGH 50, inclusive,

Defendants.

CASE NO.: 07CV2218 LAB (RBB)

**DECLARATION OF VINCENT J. TIEN IN
OPPOSITION TO ANTI-SLAPP MOTION
OF DEFENDANTS CITY OF IMPERIAL
AND MIGUEL COLON**

*Assigned to: Hon. Larry Alan Burns, Courtroom
9, 2nd Floor*

MOTION

DATE: July 14, 2008

TIME: 11:15 a.m.

COURTROOM: 9

Action Filed: 11/20/07

DECLARATION OF VINCENT J. TIEN IN OPPOSITION TO ANTI-SLAPP MOTION
OF DEFENDANTS CITY OF IMPERIAL AND MIGUEL COLON

I, Vincent J. Tien, declare:

1. I am an attorney, duly admitted to practice in the United States District Court, Southern District of California. I am the attorney of record for Plaintiff JOHN ESPINOZA. The following facts are known to me by personal knowledge and, if called, I could testify competently thereto.

2. I filed this action on Plaintiff's behalf, arising from federal question subject matter jurisdiction, on November 20, 2007, after receiving "right to sue" notices from the California Department of Fair Housing and Employment and from the United States Equal Employment Opportunity Commission. Thereafter, I filed a governmental tort claim against the CITY and COLON and received the denial of those claims from the CITY (after approximately three months). I subsequently amended the complaint, after compliance with the Tort Claims Act, on March 14, 2008, to add the government tort causes of action and served the First Amended Complaint on Defendants.

3. Defendants have not answered the First Amended Complaint. CITY and COLON filed and served upon my office a Motion to Dismiss Plaintiff's First Amended Complaint and a Motion to Strike Portions of the First Amended Complaint on or about April 8, 2008, which are still pending and under submission to this Court as of the date of this Declaration. Defendants CITY and COLON filed and served on my office the Anti-SLAPP Motion on or about June 16, 2008, during the pendency of their previous motion to dismiss.

4. Due to the procedural matters that have occurred thus far in the case, I have not had the opportunity to conduct discovery in this action. As of this date, no Defendant has

1 answered Plaintiff's Complaint, the case is not "at issue", no party has provided initial
2 disclosures, there has been no early conference of counsel, and no early neutral settlement
3 evaluation pursuant to local rules and FRCP, and no party has engaged in formal discovery.
4

5 5. Disclosure and discovery is necessary to obtain evidence to oppose Defendants'
6 SLAPP Motion. I intend to use any initial disclosures provided by the Defendants, who are in
7 exclusive possession of evidence relevant to Plaintiff's claims, and formal discovery procedures
8 to obtain said evidence.
9

10 I declare under penalty of perjury under the laws of the United States and of the State of
11 California that the foregoing is true and correct.

12 Executed this 30th day of June 2008 at Tustin, California.
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17 By: s/Vincent J. Tien
18 VINCENT J. TIEN, Declarant
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 17291 Irvine Boulevard, Suite 150, Tustin, California 92780.

On June 30, 2008 I caused to be served the foregoing documents described as:
DECLARATION OF VINCENT J. TIEN IN OPPOSITION TO ANTI-SLAPP MOTION OF DEFENDANTS CITY OF IMPERIAL AND MIGUEL COLON on the parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Jeffrey P. Thompson, Esq.
Jennifer K. Berneking, Esq.
DECLUES, BURKETT & THOMPSON, LLP
17011 Beach Blvd., Ste. 400
Huntington Beach, CA 92647-7455

xx BY MAIL: I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Tustin, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on the same day in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

xx BY ELECTRONIC FILING. I caused all of the pages of the above-entitled document(s) to be electronically filed and served on designated recipients through the electronic case filing system for the above-entitled case. The file transmission was reported as successful and a copy of the Electronic Case Filing Receipt will be maintained with the original document(s) in this office.

___ BY EXPRESS SERVICE CARRIER: I deposited in a box or other facility regularly maintained by ___, an express service carrier, or delivered to a courier or driver authorized by said carrier to receive documents, each such envelope, in an envelope designated by the said express service carrier, with delivery fees paid for.

___ BY FACSIMILE: I caused the foregoing documents to be sent to the addressee(s) above via facsimile.

___ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee above.

___ (STATE) I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

xx (FEDERAL) I declare that I am employed in the office of the member of the bar of this court, at whose direction this service was made.

Executed this 30th day of June 2008 at Tustin, California.

s/Vincent J. Tien

VINCENT J. TIEN, Declarant.